No. 88-359

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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In The
Supreme Court of the United States
October Term, 1988

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Dale G. Button and Glorianna Button,
husband and wife,

Petitioners,

v.

Connecticut General Life Insurance Company
and Cigna Insurance Company,

Respondents.

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REPLY BRIEF

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REPLY BRIEF

Rule 22.5 of the Rules of the Supreme Court of the United States provides that "A Reply Brief addressed to arguments first raised in the Brief in Opposition may be filed". The Respondents raise such an issue by requesting that costs and attorney's fees be awarded under authority of Rule 49.2 of the Rules of the Supreme Court of the United States. In their conclusion, Respondents claim that the Petition is devoid of federal issues, frivolous, and brought in bad faith. Opposition, p. 10.

Petitioners, therefore, find it necessary to respond to this new charge of bad faith. The major argument raised in the Petition questions the Ninth Circuit Justices' failure to consider the Federal Rules of Civil Procedure, Rule 56. In point of fact, that is what the Ninth Circuit Justices did. We reiterate our argument "at no point in the discussion did the Ninth Circuit Justices refer to the Rule 56 standard of review or the decisions of the Ninth Circuit and this Court governing summary judgment in finding against the Petitioner." Petition, pages 7, 8.

The Respondent's statement at page 7 of their Opposition that "Petitioners *correctly* note that the opinion [Ninth Circuit] made no mention of the federal standards for determination of summary judgment motions" is a glaring admission of the main thrust of the Petitioners' argument. (Emphasis added)

The Respondents charge of bad faith is a smoke screen designed to turn this Honorable Court's attention away from the heart and soul of the Petitioners' argument. This is not a case in which the Petitioners are frivolously and in bad faith buying delay time to avoid paying a money

judgment. *Barrow v. Hill,* 54 U.S. 54 (1852); *Prentice v. Pickersgill,* 73 U.S. 511 (1868); *Wagner Electric Mfg. Co. v. Lyndon,* 262 U.S. 226 (1923). This is the Petitioners' last resort to clear away the smoke screen which has been so aptly applied by the Respondents in the courts below.

The Petitioners request that this Honorable Court disregard these cavalier claims of frivolity and bad faith. The Petition raises serious issues of national importance which call out for the invocation of this Honorable Court's inherent supervisory authority over the federal judiciary. The Petition is not devoid of federal issues. The Ninth Circuit should not be allowed to omit or even gloss over this Honorable Court's standards for determining summary judgment motions. By virtue of Respondents' own admission, the Ninth Circuit has ignored the federal standards relating to summary judgment.

The Respondents' charge of bad faith should be summarily dismissed. The Petitioners' prayer for granting a Writ of Certiorari should be allowed to proceed.

Respectfully submitted this 29th day of September, 1988.

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